

UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF NEW YORK

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ANTHONY RAPP and C.D.,

Civil Action No. 1:20-cv-09586 (LAK)

Plaintiffs,

- against -

KEVIN SPACEY FOWLER a/k/a KEVIN SPACEY,

Defendant.

----- X

Zoom Deposition

January 26, 2022

11:03 a.m.

EXAMINATION BEFORE TRIAL of the Expert
Witness, ALEXANDER BARDEY, M.D., pursuant to Order,
held on the above date and time, via
videoconference, taken by and before KRYSTINA
KORNAK FLORA, RPR, a Notary Public within and for
the State of New York.

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(2) Q. And is that the relevance you ascribed
(3) to in your report?

(4) A. Yes.

(5) Q. It is.

(6) Did your report talk about conflating
(7) the two? That it happened to him on stage and now
(8) he must think that's what really happened to him in
(9) real life?

(10) A. I did write about that.

(11) Q. You no longer think that's a reasonable
(12) possibility, right?

(13) A. Well, given the testimony subsequent to
(14) my report in which individuals claim that within a
(15) short time after this incident he gave a description
(16) that was consistent what he's saying now, that makes
(17) the possibility of this being a conflated false
(18) memory less likely.

(19) Q. Do you think it's even a reasonable
(20) possibility that he's conflating memories in this
(21) case?

(22) A. Not anymore, no.

(23) Q. You read Dr. Loftus' deposition?

(24) A. Yes.

(25) Q. Do you understand she testified about

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(2) MR. SCOLNICK: Objection. Vague and
(3) ambiguous.

(4) A. We talked about during my
(5) evaluation and certainly in the deposition he gave
(6) good details and sometimes conflicting details about
(7) what happened, and so that's why I summarized it as
(8) I did.

(9) Q. What do you mean by that, sir?

(10) A. Well, that he disclosed the incident
(11) that he claims occurred between him and Kevin
(12) Spacey, he didn't disclose it to anyone for several
(13) years.

(14) Q. But, sir, you'd agree with me, the fact
(15) that he was telling somebody about this while he was
(16) in high school, it definitively rules out the idea
(17) that he made this up to be the part of the "Me Too"
(18) movement, true?

(19) A. To make it up to be part of the "Me
(20) Too" movement?

(21) Q. Yeah.

(22) A. Specifically "Me Too" movement, I would
(23) agree.

(24) Q. Yeah. That's one of the implications
(25) here, isn't it? That he wanted to be part of "Me

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(2) or that it's a lie. The fact that he -- if, in
(3) fact, he did recount his story weeks after it
(4) occurred, it reduces the likelihood that it is some
(5) sort of conflated or false memory. That's how my
(6) opinion -- not even my opinion. That's how my
(7) understanding has evolved upon reviewing additional
(8) materials.

(9) Q. Upon reviewing that additional
(10) material, it wasn't until this month in
(11) January of 2021 that you first formed the opinion
(12) that he was lying initially out of jealousy because
(13) he had feelings -- sexual feelings for Mr. Spacey
(14) and Mr. Barrowman, and he felt marginalized by being
(15) a third wheel, secondary to their attraction to one
(16) another, and he lashed out, and started telling this
(17) story, right?

(18) MR. SCOLNICK: Misstates the opinion as
(19) to attraction of Mr. Spacey.

(20) Q. Well, did I get that right, what you're
(21) saying, or I got it wrong?

(22) A. Well, I was going to correct you,
(23) because you said January of 2021. So I just want to
(24) make sure that we're talking about January of 2022.

(25) Q. Yeah, that's my stupidity.

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(2) know that?

(3) A. Well, from his appearances on Broadway
(4) and from the plays that he was involved with, and he
(5) was older, he had a longer career, and at that point
(6) he was already more distinguished. Rapp was still
(7) just a child actor at that point --

(8) Q. Right.

(9) A. -- playing secondary roles.

(10) Q. Tell us about Mr. Spacey's part in --
(11) do you know what play he was in in 1986 when this
(12) occurred?

(13) A. Long Day's Journey Into Night,
(14) something like that, I believe.

(15) Q. Yeah. What part did he play?

(16) A. He played, I think, Jack Lemmon's son.

(17) Q. Yeah. What's the name of that
(18) character?

(19) A. I have no idea.

(20) Q. How much stage time does he get?

(21) A. I have no idea.

(22) Q. Is it more than five minutes?

(23) A. I can't tell you that. I don't know.

(24) Q. Did Mr. Spacey win any awards for that?

(25) A. I don't know if he won any awards for

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(2) career that was so much better than his in 1986?

(3) MR. SCOLNICK: Objection. Misstates
(4) the testimony.

(5) A. His jealousy was much more personal at
(6) that level. Back when he was 14 years old and he's
(7) in -- and he's with John Barrowman and he's with
(8) Kevin Spacey, he's jealous of their interaction. It
(9) had nothing to do with who had more accolades or who
(10) had more, you know, distinguished performances. It
(11) was more a personal thing at that level.

(12) Q. So the jealousy that Mr. Rapp had for
(13) Mr. Spacey, now you realize had nothing to do with
(14) Mr. Spacey's accomplishments compared to Mr. Rapp,
(15) right?

(16) MR. SCOLNICK: Objection. Misstates
(17) the testimony. Argumentative.

(18) A. That's not what I'm saying at all.

(19) Q. Well, yes or no?

(20) A. It's not a yes-or-no question.

(21) Q. Well, was Rapp jealous of Spacey's
(22) career?

(23) A. He was jealous of his career and
(24) certainly that jealousy grew over time when Spacey
(25) became a household name and won Tonys and Oscars and

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(2) A. Mr. Barrowman's account at his
(3) deposition.

(4) Q. What about it.

(5) A. Excuse me?

(6) Q. What about his account in his
(7) deposition that supports it?

(8) A. That he and Spacey were dancing
(9) together, maybe they touched while they were
(10) dancing. They went back to the apartment.
(11) Barrowman and Spacey were on the bed, they laid back
(12) on the bed. I think they touched in some kind of
(13) way while Rapp was in the bathroom. When Rapp came
(14) out of the bathroom they both sat up and shortly
(15) thereafter Barrowman and Rapp left.

(16) Q. Did Mr. Barrowman tell Mr. Spacey about
(17) what happened -- Withdrawn.

(18) Did Mr. Barrowman say he told Mr. Rapp
(19) about what happened when Anthony was in the
(20) bathroom?

(21) A. I don't recall.

(22) Q. Well, if he didn't tell him, can you
(23) think of some other way that Mr. Rapp would have
(24) known about it?

(25) A. Well, Mr. Rapp had been witness to

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(2) Hart said he told him weeks later, right?

(3) **A. Right. We're talking about**
(4) **Mr. Barrowman, I believe.**

(5) Q. Yeah. But I'm saying, putting it all
(6) together, as you have now done this month, you know
(7) that Mr. Rapp told Mr. Hart about this weeks after
(8) the incident and Barrowman didn't tell Mr. Rapp
(9) about what happened with him and Spacey until years
(10) later, right?

(11) **A. Yes.**

(12) Q. Was that relevant to you in forming the
(13) opinion that Anthony Rapp was lying to Mr. Hart out
(14) of jealousy?

(15) **A. No, not at all.**

(16) Q. In your report you considered the
(17) significance of what Anthony Rapp had told Sean
(18) Snow, right?

(19) **A. Yes.**

(20) Q. By the way, if someone had felt
(21) traumatized about what occurred with a person, would
(22) it be consistent for that person to relive that
(23) trauma when the person's name came up or he saw a
(24) depiction of that person?

(25) **A. Well, as a -- yeah, I'll answer your**

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(2) Q. So even if he didn't know about it he
(3) could still be jealous about it and lie about it,
(4) right?

(5) A. Sure. If he did not get the attention
(6) that he was seeking, he could very well feel that
(7) way.

(8) Q. So in that case it wouldn't be because
(9) of his feelings for Barrowman, it wouldn't be
(10) because Spacey was directing his attention to
(11) Barrowman. It would just be because he had these
(12) feelings for Spacey, and Spacey, this 26-year-old
(13) man, wasn't returning the feelings for this
(14) 14-year-old boy in that case, right?

(15) MR. SCOLNICK: Objection. Misstates
(16) the testimony.

(17) A. No. No. It would be more that an
(18) adult who he was visiting, whose work he was
(19) admiring was ignoring him, independent of any
(20) feelings that he might have had with Mr. Spacey.

(21) Q. I think one of the things you mentioned
(22) was he must have admired Mr. Spacey because he
(23) accepted the dinner invitation and he went to the
(24) Limelight with him, right?

(25) A. Sure.

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(2) was a way of putting him in the center of attention
(3) and taking some of the "Me Too" spotlight and
(4) putting it on himself. He saw an opportunity.

(5) Q. But how does that impact on whether or
(6) not it actually occurred? In other words -- yeah,
(7) that's what I'm getting at. You're saying he
(8) thought this would be good for him and good for his
(9) career, right?

(10) A. Yes.

(11) Q. Okay. Does it have any bearing on the
(12) issue of whether or not his allegation is true?

(13) A. It has bearing on whether the
(14) allegation had any psychological impact on him.

(15) Q. Could you try answering my question
(16) please?

(17) A. I am answering your question.

(18) Q. No. You're answering the question you
(19) want to answer.

(20) MR. SCOLNICK: Objection.

(21) Argumentative. Object to the preamble.

(22) Q. I asked you if it had bearing on
(23) whether or not it's true and your answer was it has
(24) bearing on the damage it caused. Two different
(25) things, right?

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(2) result of that.

(3) Q. But trauma is subjective. Right? In
(4) other words, is what happened to Mr. Rapp, as he
(5) alleges, a 26-year-old man throwing him down --
(6) picking him up, throwing him down on the bed,
(7) getting on top of him, putting him in that
(8) sexualized position when he was 14 years old, would
(9) that be a competent-producing cause of PTSD?

(10) MR. SCOLNICK: Well, objection as to
(11) the characterization of it as a sexualized
(12) event. Misstates the evidence.

(13) A. I would not characterize what
(14) happened -- what he claims happened to him as a
(15) sexualized event. You know, in his descriptions to
(16) me about what happened he made it seem as though --
(17) he claimed that Mr. Spacey picked him up, was drunk,
(18) and fell on top of him in a drunken state, did not
(19) move, didn't say or do anything sexual, and that he
(20) squirmed out. So I don't necessarily see that as
(21) being a sexualized assault.

(22) Q. Can you please, as specifically as
(23) possible, point to any place in the record where
(24) Mr. Rapp said that Mr. Spacey fell on him?

(25) A. That was during my conversation with

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(2) question. If he is forced to be exposed to it then,
(3) yes, you would expect some sort of exaggerated
(4) startled response, some sort of alteration in the
(5) arousal when confronted with the subject of the
(6) trauma. In general, though, individuals who have
(7) been traumatized tend to avoid encounters with the
(8) individual that traumatized them, and there was no
(9) evidence that Rapp avoided that.

(10) Q. What's your basis for saying there's no
(11) evidence that he avoided that?

(12) A. Well, I mean, I think in Quill's
(13) deposition and I think both Barrowman and Adam Rapp,
(14) and Rapp himself discussed attending either seeing
(15) movies with Fowler in it or going to TV parties for
(16) the Oscars or Tonys or other kind of such award
(17) ceremonies, and knowing full well that Kevin Spacey
(18) was either going to present or was going to receive
(19) an award and, yet, Rapp would attend these, and then
(20) when that came up would tell everybody, you know,
(21) his story, would throw pencils at the screen.
(22) That's not avoidance. That's actively seeking it
(23) out and reacting to it.

(24) Q. Did you say something about throwing
(25) pencils at the screen?

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(2) A. Yes.

(3) Q. Well, you saw Mr. Rapp describe his
(4) reaction to seeing Mr. Spacey in the film Working
(5) Girl, right?

(6) A. Yes.

(7) Q. Do you remember that film?

(8) A. Sure.

(9) Q. Mr. Spacey was no star of that film,
(10) right?

(11) A. I think he had a minor role.

(12) Q. Yeah. Melanie Griffith and Harrison
(13) Ford, right?

(14) A. Hmm-hmm. Yes.

(15) Q. Take my word for it.

(16) A. On this I will.

(17) Q. If Chase didn't object, take my word
(18) for it.

(19) A. Okay.

(20) Q. Assumes facts not in evidence.

(21) Mr. Rapp testified when he went to see
(22) that film he didn't know Mr. Spacey was in it. Do
(23) you find that somehow less than credible?

(24) A. That he didn't know he was in it?

(25) Q. Yeah.

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(2) A. No. I mean, he had a minor character.
(3) He probably wouldn't be on a marquee. He would have
(4) no way of knowing.

(5) Q. It was even before IMDb, right?

(6) A. Right.

(7) Q. So when he described being surprised by
(8) seeing Mr. Spacey on the screen and he felt a
(9) lightning bolt go through him and he had a physical
(10) reaction to it, that's perfectly consistent with
(11) someone reliving a traumatic experience, true?

(12) A. It could be, sure.

(13) Q. Now, you talked about his jealousy for
(14) Mr. Spacey's career. We can agree Mr. Spacey
(15) reached the top of the heights, right?

(16) A. We can.

(17) Q. Academy award winner, one of the finest
(18) actors any of us has ever seen, right?

(19) A. Right.

(20) Q. Are you a fan of his?

(21) A. I think he's a good actor. I think
(22) he's in some good movies. Sure.

(23) Q. Yeah. How is Anthony Rapp's career
(24) going?

(25) A. He's, I think, in the third or fourth

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(2) hypothetical. Vague and ambiguous.

(3) A. Well, sure. The more inconsistencies
(4) there are the more question they raise about the
(5) veracity of the claim.

(6) Q. And if the memories of the people he
(7) told are too consistent, that's suspicious. It also
(8) makes it more likely that Mr. Rapp is lying, right?

(9) A. In this particular case, yes.

(10) Q. What's the right amount of
(11) inconsistency?

(12) A. I think that's a judgment call. I
(13) think you -- you know, you gauge the significance,
(14) you gauge the discrepancies and the similarities,
(15) and then you weigh it out in the end. There's no
(16) magical fraction or formula you use. When I assess
(17) whether someone is credible it's based on the
(18) totality of all the information I'm looking at.
(19) It's not usually based on a single factor.

(20) Q. So the fact that those more -- those
(21) more recent witnesses -- who did you say? Denny,
(22) and Hart, and Law. The fact that they all
(23) remembered the story consistency led you to believe
(24) they were all lying, right?

(25) MR. SCOLNICK: Objection. Go ahead.

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(2) of semi-dress, and then sees a form -- a human form
(3) on a bed or a couch where there are some clothes,
(4) and then acts in a sexual manner towards that shape
(5) until he realizes that it's not his wife, that it's
(6) actually Freddy.

(7) So those were very relevant to me
(8) because the combination of both of those acts is
(9) essentially identical to what Mr. Rapp claims
(10) happened to him at the hands of Kevin Spacey, which
(11) I think becomes either a very, very bizarre
(12) coincidence or the basis for part of the story that
(13) he concocted. That, you know, it's easier to come
(14) up with a lie where you can relate to something that
(15) actually occurred, it makes it much easier to be
(16) consistent in what you're claiming occurred rather
(17) than inventing something de novo.

(18) Q. I see. So in other words, it was
(19) easier to come up with that as a lie than it would
(20) be to come up with a new lie about what Mr. Spacey
(21) had done?

(22) MR. SCOLNICK: Objection.

(23) Argumentative.

(24) Q. You could answer.

(25) A. Precisely.

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(2) could ever cause PTSD? Or it could but not for this
(3) guy?

(4) **MR. SCOLNICK: Objection --**

(5) Q. Or you don't know?

(6) **A. Well, first of all, PTSD could be**
(7) **diagnosed only if there had been an exposure to**
(8) **death, serious injury, or sexual violence, and I**
(9) **don't believe that the allegations as described rise**
(10) **to the level of either of those and, therefore,**
(11) **preclude a diagnosis of PTSD.**

(12) Q. For anybody, right?

(13) **A. For anybody.**

(14) Q. Okay. One of the very important
(15) findings that you've now come up with this month is
(16) that Mr. Rapp was lying about this because of his
(17) jealousy over what occurred in the flirtation
(18) between Mr. Barrowman and Mr. Spacey, right?

(19) **A. No, that's not what I said. You're**
(20) **mischaracterizing my testimony.**

(21) Q. Explain it to us, if you would.

(22) **A. I said it's a possibility.**

(23) Q. Okay. What in these records supports
(24) the notion that Mr. Rapp knew about this flirtation
(25) between Mr. Barrowman and Mr. Spacey?

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(2) Q. Let me read to you from the e-mail that
(3) Mr. Spacey initially sent to Mr. Lowenstein?

(4) MR. SCOLNICK: Richard, if you're going
(5) to be asking questions about the e-mail, put
(6) it on the screen. The witness deserves to
(7) see the whole thing in context and not to
(8) be -- have selected quotes and --

(9) MR. STEIGMAN: I'll tell you what, I'll
(10) read every word. Okay? I'll read every one.

(11) MR. SCOLNICK: Okay.

(12) Q. So it begins -- I'd rather just do it
(13) this way. It begins, "I have a lot of respect and
(14) admiration for Anthony Rapp, and there's no excuse
(15) for the behavior that he describes, and I want to
(16) apologize to him immediately."

(17) First of all, do you agree with that?
(18) If the allegation is true, that his conduct is
(19) inexcusable, Doctor?

(20) A. I think that's fair.

(21) Q. Why is that?

(22) A. Because it would be inappropriate to
(23) engage in inappropriate contact with a minor.

(24) Q. And, in fact, to the extent that this
(25) was a sexual connotation, unwanted sexual contact or